IN THE HIGH COURT OF DELHI AT NEW DELHI

% **Reserved on : 03.09.2007**
Date of Decision: 12.10.2007

\+ **FAO (OS) No. 109/2006**

\# Mritak Charam Sodhan Cooperative Industrial Society Ltd. ..... Appellant
! Through: Mr. A.S. Gambhir, Advocate

versus

$ Municipal Coporation of Delhi ..... Respondent
^ Through: Mr. Anoop Bagai with Mr. Devendra Nautiyal, Advocates

CORAM:
*** HON'BLE MR. JUSTICE T.S. THAKUR**
*** HON'BLE MS. JUSTICE VEENA BIRBAL**

1. Whether Reporters of local papers may be allowed to see the judgment.No
2. To be referred to the Reporter or not? No
3. Whether the judgment should be reported in the Digest? No.

*** Veena Birbal, J.**

1. The present appeal is under Section 34 of the Arbitration Act read with order XLIII CPC against impugned order dated 16.01.2006 passed by learned Single Judge in the Arbitration case whereby the arbitration award dated 11.07.1996 has been made rule of the Court and decree has been ordered to be drawn up accordingly.

2. Briefly the facts leading to the filing of the present appeal are as under:

The appellant was awarded contract of removal of carcasses from the city by the respondent/MCD through intervention of the Court for which the highest bid of the appellant was of Rs.34 lacs. The contract was

for one year duration i.e. from 01.04.1993 to 31.03.1994. Some disputes arose about the payment which were allegedly to be made by the appellant to the MCD. The appellant did not make the payment and accordingly respondent/MCD invoked arbitration clause 14 in the agreement and appointed Mr. S.M. Husnain, the then Chief Engineer as arbitrator vide order dated 02.06.1994. After retirement of Shri Husnain, on attaining the age of superannuation, he resigned as the arbitrator vide his letter dated 18.07.1995 and in his place Mr. C.M. Vij, Chief Engineer was appointed as the sole arbitrator. The Chief Engineer entered upon the reference vide letter dated 02.01.1996 and concluded the arbitration proceedings on 22.05.1996 requiring the parties to file authorities with reference to submission made by them and gave them fifteen days' time. No authorities were filed by the parties. After considering the claims and hearing the parties, the arbitrator directed the appellant to pay a sum of Rs.5,72,000/- along with interest @ 12% per annum from 13.06.1994 upto the date of payment to respondent/MCD. He also directed the respondent/MCD to refund security deposit to the appellant after making admissible recoveries, if any, as per terms and conditions of agreement dated 18.01.1994. The award was filed before the Court and was registered as CS(OS) No.348-A/1997. Notice of award was issued to both the parties. The appellant filed objections against the award dated 11.07.1006. The main objection raised before the learned Single Judge was that the appellant was not

allowed to lift carcasses for the complete period of contract as such appellant was required to pay balance amount as is directed by the arbitrator. Learned counsel for appellant further raised the objection that the award was non-speaking one and that the appointment of arbitrator was illegal and the matter was to be referred to Registrar of Societies. After hearing learned counsel for the parties and perusing the material on record learned Single Judge dismissed the Objections. Consequently award was made rule of the court and decree was ordered to be drawn up and suit was disposed off accordingly. Aggrieved with the aforesaid order/judgment dated 16.01.2006 of learned Single Judge present appeal is filed.

3. We have heard Shri A.S. Gambhir, learned counsel for appellant and Shri Anoop Bagai, learned counsel for respondent and perused the record.

4. Learned counsel for the appellant has contended that the arbitrator committed manifest illegality in awarding the complete amount of Rs.34 lacs for the contract even though the appellant society could not lift carcases between the period 01.04.1993 to 19.04.1993 as it was awarded the contract only on 20.04.1993, thereafter between 23.04.1993 to 29.04.1993 on account of stay obtained by one Bhoop Singh from the court of Sub Judge and from September 1993 to 03.01.1994 on account of alleged collusion between Gulab Singh and MCD. Learned counsel further contended that the appointment of arbitrator was illegal as the dispute ought

to have been referred to Registrar under Cooperative Societies Act and the rules. It is prayed that the record be called and the impugned order/judgment dated 16.1.2006 passed by the learned Single Judge be set aside. It is further prayed that award dated 11.7.1996 be quashed and counter claim of Rs.9 lacs along with interest @ 18% per annum be allowed and respondent be directed to pay the same from 17.10.94 up to the date of payment.

5. On the other hand, it is contended on behalf of the respondent the order of learned Single Judge is legal and valid in all respects and does not call for any interference by this Court.

6. Arbitration is the judicial forum decided by the parties on their own volition. This Court is not to sit in appeal over the conclusions of the arbitrator. In an appeal under Section 39 of Arbitration Act, 1940 jurisdiction of this Court is limited to parameters set out under Section 30 of the Arbitration Act i.e. (a) when arbitrator has misconducted himself or the proceedings (b) an award has been made after issue of an order by the court superseding the arbitration and (c) when an award has been improperly procured or is otherwise invalid.

7. We have considered the contentions raised. The contentions raised are based on facts. Perusal of the record shows that same have been raised before learned arbitrator also. The award passed by learned arbitrator is non-speaking one. Under the Arbitration Act, 1940 arbitrator is not

obliged to give reasons in passing the award. Since in the present case there is a non-speaking award it will be difficult for this Court to assess the decision making process of the arbitrator. However, there is sufficient material on record to show that finding arrived at by the arbitrator in the award dated 11.07.1996 cannot be considered as unreasonable in any manner. Even before the payments were made by the appellant society it had been made aware by the letter dated 20.04.1993 that the duration of the contract was up to 31.03.1994 for a total sum of Rs.34 lacs. The appellant made the payment subsequently. It may not now be possible for the appellant to turn around and allege that the contract was awarded only on 20.04.1993, as such appellant is not liable to pay for the period 01.04.1993 to 19.04.1993. Insofar as the period of 23.04.1993 to 29.04.1994 is concerned it may be noticed that the stay had been obtained by a third party for which no fault can be found with the respondent. Moreover, as noted by the learned Single Judge, the appellant made further payments in pursuance of the contract even after 29.04.1993. There is nothing on record before us that these subsequent payments were made under any objection. For the period September 1993 to December 1993, the case of appellant is that though the contract was between appellant and respondent/MCD, respondent/MCD permitted one Gulab Singh to remove carcases. It is alleged that Gulab Singh was not even a member of appellant society. It is further alleged that Gulab Singh had even deposited a sum of Rs.5 lacs with

respondent /MCD. It may be noted that in the reply to claim filed by appellant before arbitrator no such allegations are made. The contention raised has no force.

8. As regards contention that the matter should have been referred to Registrar under the Cooperative Societies Act is concerned, the same has also been examined. We are in agreement with the learned Single Judge that as no such plea was taken before the arbitrator, it would not now be open for the appellant to raise this plea. Proceedings remained pending before the arbitrator for a long time. There is nothing on record to show that the appellant was willing to refer the matter to the Registrar as is alleged.

9. There is nothing on record to show that there are errors apparent on the record and that the arbitrator committed gross misconduct. The appellant has failed to point out any reason for this Court to interfere with judgment of learned Single Judge. Impugned judgment dated 16.01.2006 of learned Single Judge is, therefore, upheld.

10. Appeal stands rejected. Parties to bear their own costs.

VEENA BIRBAL, J

T.S. THAKUR, J

October 12, 2007
ns/srb